

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

21-CR-673 (ALC)

ORDER DENYING BAIL

DAVID VALERIO,

Defendant.

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ANDREW L. CARTER, JR., United States District Judge:

On November 4, 2021, Magistrate Judge Cave ordered Valerio detained. On November 30, 2021, Valerio filed a new motion for bail, claiming that he poses neither a risk of flight or danger to the community. I am not bound by the magistrate judge's decision, and I review Valerio's bail application *de novo*. The government opposed the motion on December 3; the defendant replied on December 5; the government filed a sur-reply on December 6. For the reasons stated below, the motion for bail is denied.

Valerio is indicted for conspiring to smuggle and possess contraband, including narcotics, in a federal prison, conspiring to deprive the Bureau of Prisons of the honest services of certain employees, and conspiring to distribute and possess with intent to distribute mixtures and substances including oxycodone, alprazolam, suboxone, K2, and marijuana. According to the government, Valerio committed these crimes while incarcerated in a federal prison in Manhattan. At the time Valerio was in prison, he was serving a sentence for escaping federal custody, related to a conviction for bank fraud, forged securities and other crimes involving dishonesty.

Notwithstanding Valerio's history of fraud, criminal record, bench warrant history and conviction for escape, he claims that he can be trusted to return to court and that the government has failed to prove that he is a risk of flight. He is wrong.

Defendant claims that he has made his recent court dates, but that doesn't ensure that he will continue to make all of his court dates. He has a history of bench warrants, and he has been convicted, recently, of escaping from federal custody. Although he is thirty-five now, he was in his thirties when he escaped from custody.

Mr. Valerio has an incentive to flee. He faces a twenty year statutory minimum, and according to the government, his guideline range may be 210-262 months. When he escaped federal custody, the incentive to flee was not nearly as high; he simply needed to complete his term at the residential re-entry center.

I find that the government has easily demonstrated risk of flight by a preponderance of the evidence, establishing that no condition or combination of conditions would reasonably assure Valerio's return to court. There is no need to consider whether the government has proven dangerousness. The bail application is denied.

SO ORDERED.

Dated: January 26, 2022
New York, New York

/s/ Andrew L. Carter, Jr.
ANDREW L. CARTER, JR.
United States District Judge